

DECISION

19826 Agazarian
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-201789**DATE:** October 20, 1981**MATTER OF:** Customs Inspector⁵ - Entitlement to overtime compensation.

DIGEST: Under Customs overtime provision at 19 U.S.C. § 267 Customs inspector who worked 8-1/4 hours on Sunday was paid 2 days' extra compensation for Sunday work of up to 8 hours. He is not entitled to additional overtime compensation under 19 U.S.C. § 267 for 15-minute period he worked in excess of 8 hours on a Sunday. Regulations at 19 C.F.R. 24.16(g) require employee to perform overtime services of at least 1 hour to be entitled to overtime compensation under 19 U.S.C. § 267.

This action is in response to a request for an advance decision by Mr. William T. Archey, Acting Commissioner of Customs, as to whether Customs Inspectors who perform services in excess of 8 hours but less than 9 hours on a Sunday or holiday are entitled to receive an extra 1/2 day's pay for overtime work in addition to 2 days' pay for services performed for up to 8 hours on such days.

The Commissioner advises that this matter arises out of a claim for overtime compensation under 19 U.S.C. § 267 for work performed in excess of 8 hours on a Sunday. The submission states that on Sunday December 11, 1977, the inspector worked from 1:00 p.m. to 2:00 p.m. and from 8:45 p.m. to 9:15 p.m. which is considered a continuous period of 8-1/4 hours under the Customs Service overtime compensation regulations. On another occasion, Sunday, October 22, 1978, he commenced work at 6:00 a.m., and including waiting time, completed his assignment at 2:15 p.m., a continuous period of 8-1/4 hours for Customs overtime purposes. On each occasion the inspector received the extra 2 days' pay provided under 19 U.S.C. § 267 for Sunday work plus overtime compensation under such provision in the amount of 1/2 day's pay for the 1/4-hour period worked in excess of 8 hours. The Customs Service later determined that the employee was not entitled to overtime compensation for the time he worked in excess of 8 hours on each Sunday.

018982

116695

The Customs Service has obtained a refund from the employee for the overtime compensation paid under 19 U.S.C. § 267 for the additional 1/4-hour period of work and the employee has appealed this action to the agency. The employee contends that he is properly entitled to overtime compensation under the Customs Service regulation set forth at 19 C.F.R. § 24.16(d) which he argues provides that any time worked over 8 hours in a day should be construed as at least 1 hour's work.

Customs inspectors are entitled to overtime compensation for inspectional duties under the authority of 19 U.S.C. § 267 which provides in part as follows:

"The Secretary of the Treasury shall fix a reasonable rate of extra compensation for overtime services of customs officers and employees who may be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian, or on Sundays or holidays * * * such rates to be fixed on the basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond five o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from five o'clock postmeridian to eight o'clock antemeridian), and two additional days' pay for Sunday or holiday duty.* * * "

The Customs Service regulations implementing 19 U.S.C. § 267 are set forth at 19 C.F.R. § 24.16 (1980). Subsection 24.16(h) provides in part that the rate of extra compensation for Sunday work is fixed at 2 days' pay for work of up to an aggregate of 8 hours. It further provides that work in excess of an aggregate of 8 hours during the 24 hours of a Sunday shall be compensated for on the same basis as for overtime services performed at night on a weekday.

With regard to overtime compensation under 19 U.S.C. § 267, 19 C.F.R. 24.16(g) provides as follows:

"(g) Rate for night services. The reasonable rate of extra compensation for authorized overtime services performed by Customs employees at night on any weekday is hereby fixed at one-half of the gross daily rate of the regular pay of the employee who performs the service for each 2 hours of compensable time, any fraction of 2 hours amounting to at least 1 hour to be counted as 2 hours * * *"

The above requirement that compensable overtime must consist of at least 1 hour's actual service is consistent with our decisions which have long held that entitlement to overtime compensation under the similar overtime provision for immigration inspectors, 8 U.S.C. § 1353a requires that an employee perform at least 1 hour of overtime work. See 16 Comp. Gen. 757 (1937) and 49 *id.* 577 (1970). Such a construction would be equally applicable to the requirements for overtime for Customs Inspectors under 19 U.S.C. § 267 since the courts have routinely applied payment of the special rate of overtime in the same manner under both statutes. See Bishop v. United States, 174 Ct. Cl. 31, 38 (1966).

The employee contends that the 1/4-hour period he worked on each occasion should be regarded as 1 hour's work in view of the Customs regulation at 19 C.F.R. § 24.16(d) which provides in pertinent part as follows:

"* * * Customs employees shall not be deemed available to perform reimbursable overtime services at night unless the total time of service, including waiting time, will be at least one hour, but nothing in this section shall prohibit the district director or other administrative officer from requiring an employee to perform, before he leaves his duty status and without extra compensation under the act of February 13, 1911, as amended, any work which is

pending at the beginning of the night
and can be completed in less than 1 hour.* * *"

We view the above regulation as establishing an administrative policy as to when an off-duty Customs Inspector may be called for duty. It does not require that any overtime work performed is automatically to be regarded as 1 hour's work so as to entitle the employee to overtime compensation. To conclude otherwise would be altogether inconsistent with the regulatory provision that a Customs Inspector who is on duty status may be required to perform overtime services of less than 1 hour without extra compensation under 19 U.S.C. § 267.

Accordingly, since the employee in question did not perform at least 1 hour of overtime work on each Sunday for which he claims additional compensation he would not be entitled to overtime compensation under 19 U.S.C. § 267 in addition to the 2 days' extra compensation he received for up to 8 hours' work on a Sunday.

for *Milton J. Fowler*
Comptroller General
of the United States